

AMENDED IN SENATE AUGUST 19, 2016

AMENDED IN SENATE AUGUST 15, 2016

AMENDED IN ASSEMBLY MAY 27, 2016

AMENDED IN ASSEMBLY APRIL 12, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2900

Introduced by Committee on Jobs, Economic Development, and the Economy (Assembly Members Eduardo Garcia (Chair), Brough, Brown, Chau, Chu, Gipson, Irwin, and Mathis)

March 3, 2016

An act to ~~add Chapter 8 (commencing with Section 7400) to Part 1 of Division 2 of the Public Contract Code, and to amend Sections 17059.2 and 23689 of the Revenue and Taxation Code, relating to economic development: *taxation*.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2900, as amended, Committee on Jobs, Economic Development, and the Economy. ~~Small business technical assistance centers: income~~ *Income* taxation: credits: California Competes Tax Credit Committee: GO-Biz.

~~Existing law, the Small Business Procurement and Contract Act, requires the Director of General Services and other state agencies that enter into contracts for the provision of goods, services, and information technology and for the construction of state facilities to establish goals for the participation of small businesses in these contracts, to provide for small business preference in the award of these contracts, to give~~

~~special consideration and special assistance to small businesses, and, whenever possible, to make awards to small businesses, as specified.~~

~~This bill, for contracts awarded on or after September 1, 2017, and before December 31, 2021, would require an awarding department, as defined, to report to the Legislature by a specified date following any year that state funds are awarded to a federal small business technical assistance center, as defined. The bill would require a federal small business technical assistance center, as a condition of receiving state funds, to report certain information to the awarding department, including, but not limited to, the total number of businesses assisted.~~

Existing law allows a credit against the taxes imposed under the Corporation Tax Law and the Personal Income Tax Law for each taxable year beginning on or after January 1, 2014, and before January 1, 2025, in an amount as provided in a written agreement between the Governor's Office of Business and Economic Development and the taxpayer, agreed upon by the California Competes Tax Credit Committee, and based on specified factors, including the number of jobs the taxpayer will create or retain in the state and the amount of investment in the state by the taxpayer. Existing law limits the aggregate amount of credit that may be allocated in a fiscal year. Existing law requires the Governor's Office of Business and Economic Development to post on its Internet Web site specified information, including the name of each taxpayer allocated a credit, the estimated number of jobs created or retained and the amount of investment by the taxpayer, the amount of credit allocated to the taxpayer, and, if applicable, the amount of credit recaptured from the taxpayer.

This bill additionally would require the Governor's Office of Business and Economic Development to post on its Internet Web site, the primary location where the taxpayer has committed to increasing the net number of jobs or make investments, information that identifies each tax credit award that was given a priority for being located in an area of high unemployment or poverty, and information that identifies each tax credit award that is being counted toward the amount of the credit required to be allocated to small business, as provided.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Chapter 8 (commencing with Section 7400) is~~
2 ~~added to Part 1 of Division 2 of the Public Contract Code, to read:~~

3
4 ~~CHAPTER 8. SMALL BUSINESS TECHNICAL ASSISTANCE CENTERS~~
5

6 ~~7400. (a) Following any year that state funds are awarded by~~
7 ~~an awarding department to a federal small business technical~~
8 ~~assistance center, the awarding department shall provide a report~~
9 ~~to the Legislature that includes, at a minimum:~~

10 ~~(1) The purpose of the contract and contract metrics.~~

11 ~~(2) The amount of state funds awarded and expended during~~
12 ~~the report year.~~

13 ~~(3) The information required by subdivision (c).~~

14 ~~(b) The information in the report to the Legislature described~~
15 ~~in paragraph (3) of subdivision (a) shall be based on information~~
16 ~~provided by the federal small business development center pursuant~~
17 ~~to subdivision (c).~~

18 ~~(c) As a condition of being awarded state funds, a federal small~~
19 ~~business technical assistance center shall report to the awarding~~
20 ~~department all of the following:~~

21 ~~(1) The total number of businesses assisted.~~

22 ~~(2) The number of businesses assisted by industry sector, as~~
23 ~~reported by the businesses.~~

24 ~~(3) The number of businesses assisted by city and county. If the~~
25 ~~population of the county is less than 250,000, only the name of~~
26 ~~the county is required to be reported.~~

27 ~~(4) The number of businesses assisted based on the following~~
28 ~~categories: no employees, five or fewer employees, 25 or fewer~~
29 ~~employees, 100 or fewer employees, and between 101 and 500~~
30 ~~employees, as reported by the businesses.~~

31 ~~(5) If job creation is one of the purposes of the program, the~~
32 ~~total number of jobs created and the total number of jobs retained,~~
33 ~~as reported by the business.~~

34 ~~(d) For the purposes of this section, the following terms shall~~
35 ~~have the following meanings:~~

36 ~~(1) An "awarding department" means a department, board,~~
37 ~~agency, or authority of the state, or an officer, agent, or other~~

1 authorized representative of such a state entity awarding a contract
2 for services, including technical assistance to small businesses.

3 (2) ~~A “federal small business technical assistance center” means~~
4 ~~a Small Business Development Center, a Women’s Business~~
5 ~~Center, a Veteran Business Outreach Center, or a Procurement~~
6 ~~Technical Assistance Center operating in California under a federal~~
7 ~~contract.~~

8 (3) ~~A “Procurement Technical Assistance Center” means the~~
9 ~~entity and individual, physical location, recognized by the United~~
10 ~~States Department of Defense where a small business owner can~~
11 ~~receive free training on a variety of state and federal procurement~~
12 ~~issues, that is operated by the Department of Defense pursuant to~~
13 ~~Chapter 142 (commencing with Section 2411) of Part IV of Subtitle~~
14 ~~A of Title 10 of the United States Code.~~

15 (4) ~~A “Small Business Development Center” means the entity~~
16 ~~and individual, physical location, recognized by the federal Small~~
17 ~~Business Administration where a small business owner or an~~
18 ~~aspiring entrepreneur can receive free one-on-one consulting and~~
19 ~~low at-cost training on a variety of topics including starting,~~
20 ~~operating, and expanding a small business, that is operated by the~~
21 ~~Small Business Administration and is authorized by “The Small~~
22 ~~Business Development Center Act of 1980” (Public Law 96-302).~~

23 (5) ~~A “Veteran Business Outreach Center” means the entity and~~
24 ~~individual, physical location, recognized by the federal Small~~
25 ~~Business Administration where a small business veteran owner or~~
26 ~~an aspiring veteran entrepreneur can receive free one-on-one~~
27 ~~consulting and low at-cost training on a variety of topics including~~
28 ~~starting, operating, and expanding a small business, that is operated~~
29 ~~by the Small Business Administration pursuant to Section 657b~~
30 ~~of Title 15 of the United States Code.~~

31 (6) ~~A “Women’s Business Center” means the entity and~~
32 ~~individual, physical location, recognized by the federal Small~~
33 ~~Business Administration where a small business owner or an~~
34 ~~aspiring entrepreneur can receive free one-on-one consulting and~~
35 ~~low at-cost training on a variety of topics including starting,~~
36 ~~operating, and expanding a small business, that is operated by the~~
37 ~~Small Business Administration and is authorized by the “Women’s~~
38 ~~Business Ownership Act of 1988” (Public Law 100-533).~~

39 (e) ~~The report to the Legislature, required pursuant to~~
40 ~~subdivision (a), shall be submitted in compliance with Section~~

1 9795 of the Government Code, and shall be posted on the Internet
2 Web site of the awarding department.

3 (f) To the extent that any provision of this chapter conflicts with
4 a federal regulation or law, the provision shall be inoperable.

5 (g) As an alternative to submitting the information pursuant to
6 subdivision (e), an awarding department may include the same
7 information in another annual report of the awarding department
8 and, in doing so, the report date in subdivision (a) may be modified
9 up to three months.

10 (h) (1) This chapter applies to contracts awarded on or after
11 September 1, 2017, and before December 31, 2021.

12 (2) Notwithstanding Section 10231.5 of the Government Code,
13 this chapter shall become inoperative on January 1, 2022.

14 **SEC. 2.**

15 *SECTION 1.* Section 17059.2 of the Revenue and Taxation
16 Code is amended to read:

17 17059.2. (a) (1) For each taxable year beginning on and after
18 January 1, 2014, and before January 1, 2025, there shall be allowed
19 as a credit against the “net tax,” as defined in Section 17039, an
20 amount as determined by the committee pursuant to paragraph (2)
21 and approved pursuant to Section 18410.2.

22 (2) The credit under this section shall be allocated by GO-Biz
23 with respect to the 2013–14 fiscal year through and including the
24 2017–18 fiscal year. The amount of credit allocated to a taxpayer
25 with respect to a fiscal year pursuant to this section shall be as set
26 forth in a written agreement between GO-Biz and the taxpayer and
27 shall be based on the following factors:

28 (A) The number of jobs the taxpayer will create or retain in this
29 state.

30 (B) The compensation paid or proposed to be paid by the
31 taxpayer to its employees, including wages and fringe benefits.

32 (C) The amount of investment in this state by the taxpayer.

33 (D) The extent of unemployment or poverty in the area
34 according to the United States Census in which the taxpayer’s
35 project or business is proposed or located.

36 (E) The incentives available to the taxpayer in this state,
37 including incentives from the state, local government, and other
38 entities.

39 (F) The incentives available to the taxpayer in other states.

1 (G) The duration of the proposed project and the duration the
2 taxpayer commits to remain in this state.

3 (H) The overall economic impact in this state of the taxpayer's
4 project or business.

5 (I) The strategic importance of the taxpayer's project or business
6 to the state, region, or locality.

7 (J) The opportunity for future growth and expansion in this state
8 by the taxpayer's business.

9 (K) The extent to which the anticipated benefit to the state
10 exceeds the projected benefit to the taxpayer from the tax credit.

11 (3) The written agreement entered into pursuant to paragraph
12 (2) shall include:

13 (A) Terms and conditions that include the taxable year or years
14 for which the credit allocated shall be allowed, a minimum
15 compensation level, and a minimum job retention period.

16 (B) Provisions indicating whether the credit is to be allocated
17 in full upon approval or in increments based on mutually agreed
18 upon milestones when satisfactorily met by the taxpayer.

19 (C) Provisions that allow the committee to recapture the credit,
20 in whole or in part, if the taxpayer fails to fulfill the terms and
21 conditions of the written agreement.

22 (b) For purposes of this section:

23 (1) "Committee" means the California Competes Tax Credit
24 Committee established pursuant to Section 18410.2.

25 (2) "GO-Biz" means the Governor's Office of Business and
26 Economic Development.

27 (c) For purposes of this section, GO-Biz shall do the following:

28 (1) Give priority to a taxpayer whose project or business is
29 located or proposed to be located in an area of high unemployment
30 or poverty.

31 (2) Negotiate with a taxpayer the terms and conditions of
32 proposed written agreements that provide the credit allowed
33 pursuant to this section to a taxpayer.

34 (3) Provide the negotiated written agreement to the committee
35 for its approval pursuant to Section 18410.2.

36 (4) Inform the Franchise Tax Board of the terms and conditions
37 of the written agreement upon approval of the written agreement
38 by the committee.

1 (5) Inform the Franchise Tax Board of any recapture, in whole
2 or in part, of a previously allocated credit upon approval of the
3 recapture by the committee.

4 (6) Post on its Internet Web site all of the following:

5 (A) The name of each taxpayer allocated a credit pursuant to
6 this section.

7 (B) The estimated amount of the investment by each taxpayer.

8 (C) The estimated number of jobs created or retained.

9 (D) The amount of the credit allocated to the taxpayer.

10 (E) The amount of the credit recaptured from the taxpayer, if
11 applicable.

12 (F) The primary location where the taxpayer has committed to
13 increasing the net number of jobs or make investments. The
14 primary location shall be listed by city or, in the case of
15 unincorporated areas, by county.

16 (G) Information that identifies each tax credit award that was
17 given a priority for being located in a high unemployment or
18 poverty area, pursuant to paragraph (1).

19 (H) Information that identifies each tax credit award that is
20 being counted toward the requirement of paragraph (3) of
21 subdivision (g).

22 (7) When determining whether to enter into a written agreement
23 with a taxpayer pursuant to this section, GO-Biz may consider
24 other factors, including, but not limited to, the following:

25 (A) The financial solvency of the taxpayer and the taxpayer's
26 ability to finance its proposed expansion.

27 (B) The taxpayer's current and prior compliance with federal
28 and state laws.

29 (C) Current and prior litigation involving the taxpayer.

30 (D) The reasonableness of the fee arrangement between the
31 taxpayer and any third party providing any services related to the
32 credit allowed pursuant to this section.

33 (E) Any other factors GO-Biz deems necessary to ensure that
34 the administration of the credit allowed pursuant to this section is
35 a model of accountability and transparency and that the effective
36 use of the limited amount of credit available is maximized.

37 (d) For purposes of this section, the Franchise Tax Board shall
38 do all of the following:

39 (1) (A) Except as provided in subparagraph (B), review the
40 books and records of all taxpayers allocated a credit pursuant to

1 this section to ensure compliance with the terms and conditions
2 of the written agreement between the taxpayer and GO-Biz.

3 (B) In the case of a taxpayer that is a “small business,” as
4 defined in Section 17053.73, review the books and records of the
5 taxpayer allocated a credit pursuant to this section to ensure
6 compliance with the terms and conditions of the written agreement
7 between the taxpayer and GO-Biz when, in the sole discretion of
8 the Franchise Tax Board, a review of those books and records is
9 appropriate or necessary in the best interests of the state.

10 (2) Notwithstanding Section 19542:

11 (A) Notify GO-Biz of a possible breach of the written agreement
12 by a taxpayer and provide detailed information regarding the basis
13 for that determination.

14 (B) Provide information to GO-Biz with respect to whether a
15 taxpayer is a “small business,” as defined in Section 17053.73.

16 (e) In the case where the credit allowed under this section
17 exceeds the “net tax,” as defined in Section 17039, for a taxable
18 year, the excess credit may be carried over to reduce the “net tax”
19 in the following taxable year, and succeeding five taxable years,
20 if necessary, until the credit has been exhausted.

21 (f) Any recapture, in whole or in part, of a credit approved by
22 the committee pursuant to Section 18410.2 shall be treated as a
23 mathematical error appearing on the return. Any amount of tax
24 resulting from that recapture shall be assessed by the Franchise
25 Tax Board in the same manner as provided by Section 19051. The
26 amount of tax resulting from the recapture shall be added to the
27 tax otherwise due by the taxpayer for the taxable year in which
28 the committee’s recapture determination occurred.

29 (g) (1) The aggregate amount of credit that may be allocated
30 in any fiscal year pursuant to this section and Section 23689 shall
31 be an amount equal to the sum of subparagraphs (A), (B), and (C),
32 less the amount specified in subparagraphs (D) and (E):

33 (A) Thirty million dollars (\$30,000,000) for the 2013–14 fiscal
34 year, one hundred fifty million dollars (\$150,000,000) for the
35 2014–15 fiscal year, and two hundred million dollars
36 (\$200,000,000) for each fiscal year from 2015–16 to 2017–18,
37 inclusive.

38 (B) The unallocated credit amount, if any, from the preceding
39 fiscal year.

1 (C) The amount of any previously allocated credits that have
2 been recaptured.

3 (D) The amount estimated by the Director of Finance, in
4 consultation with the Franchise Tax Board and the State Board of
5 Equalization, to be necessary to limit the aggregation of the
6 estimated amount of exemptions claimed pursuant to Section
7 6377.1 and of the amounts estimated to be claimed pursuant to
8 this section and Sections 17053.73, 23626, and 23689 to no more
9 than seven hundred fifty million dollars (\$750,000,000) for either
10 the current fiscal year or the next fiscal year.

11 (i) The Director of Finance shall notify the Chairperson of the
12 Joint Legislative Budget Committee of the estimated annual
13 allocation authorized by this paragraph. Any allocation pursuant
14 to these provisions shall be made no sooner than 30 days after
15 written notification has been provided to the Chairperson of the
16 Joint Legislative Budget Committee and the chairpersons of the
17 committees of each house of the Legislature that consider
18 appropriations, or not sooner than whatever lesser time the
19 Chairperson of the Joint Legislative Budget Committee, or his or
20 her designee, may determine.

21 (ii) In no event shall the amount estimated in this subparagraph
22 be less than zero dollars (\$0).

23 (E) (i) For the 2015–16 fiscal year and each fiscal year
24 thereafter, the amount of credit estimated by the Director of Finance
25 to be allowed to all qualified taxpayers for that fiscal year pursuant
26 to subparagraph (A) or subparagraph (B) of paragraph (1) of
27 subdivision (c) of Section 23636.

28 (ii) If the amount available per fiscal year pursuant to this section
29 and Section 23689 is less than the aggregate amount of credit
30 estimated by the Director of Finance to be allowed to qualified
31 taxpayers pursuant to subparagraph (A) or subparagraph (B) of
32 paragraph (1) of subdivision (c) of Section 23636, the aggregate
33 amount allowed pursuant to Section 23636 shall not be reduced
34 and, in addition to the reduction required by clause (i), the
35 aggregate amount of credit that may be allocated pursuant to this
36 section and Section 23689 for the next fiscal year shall be reduced
37 by the amount of that deficit.

38 (iii) It is the intent of the Legislature that the reductions specified
39 in this subparagraph of the aggregate amount of credit that may
40 be allocated pursuant to this section and Section 23689 shall

1 continue if the repeal dates of the credits allowed by this section
2 and Section 23689 are removed or extended.

3 (2) (A) In addition to the other amounts determined pursuant
4 to paragraph (1), the Director of Finance may increase the
5 aggregate amount of credit that may be allocated pursuant to this
6 section and Section 23689 by up to twenty-five million dollars
7 (\$25,000,000) per fiscal year through the 2017–18 fiscal year. The
8 amount of any increase made pursuant to this paragraph, when
9 combined with any increase made pursuant to paragraph (2) of
10 subdivision (g) of Section 23689, shall not exceed twenty-five
11 million dollars (\$25,000,000) per fiscal year through the 2017–18
12 fiscal year.

13 (B) It is the intent of the Legislature that the Director of Finance
14 increase the aggregate amount under subparagraph (A) in order to
15 mitigate the reduction of the amount available due to the credit
16 allowed to all qualified taxpayers pursuant to subparagraph (A) or
17 (B) of paragraph (1) of subdivision (c) of Section 23636.

18 (3) Each fiscal year, 25 percent of the aggregate amount of the
19 credit that may be allocated pursuant to this section and Section
20 23689 shall be reserved for small business, as defined in Section
21 17053.73 or 23626.

22 (4) Each fiscal year, no more than 20 percent of the aggregate
23 amount of the credit that may be allocated pursuant to this section
24 shall be allocated to any one taxpayer.

25 (h) GO-Biz may prescribe rules and regulations as necessary to
26 carry out the purposes of this section. Any rule or regulation
27 prescribed pursuant to this section may be by adoption of an
28 emergency regulation in accordance with Chapter 3.5 (commencing
29 with Section 11340) of Part 1 of Division 3 of Title 2 of the
30 Government Code.

31 (i) A written agreement between GO-Biz and a taxpayer with
32 respect to the credit authorized by this section shall comply with
33 existing law on the date the agreement is executed.

34 (j) (1) Upon the effective date of this section, the Department
35 of Finance shall estimate the total dollar amount of credits that
36 will be claimed under this section with respect to each fiscal year
37 from the 2013–14 fiscal year to the 2024–25 fiscal year, inclusive.

38 (2) The Franchise Tax Board shall annually provide to the Joint
39 Legislative Budget Committee, by no later than March 1, a report
40 of the total dollar amount of the credits claimed under this section

1 with respect to the relevant fiscal year. The report shall compare
2 the total dollar amount of credits claimed under this section with
3 respect to that fiscal year with the department's estimate with
4 respect to that same fiscal year. If the total dollar amount of credits
5 claimed for the fiscal year is less than the estimate for that fiscal
6 year, the report shall identify options for increasing annual claims
7 of the credit so as to meet estimated amounts.

8 (k) This section is repealed on December 1, 2025.

9 ~~SEC. 3.~~

10 *SEC. 2.* Section 23689 of the Revenue and Taxation Code is
11 amended to read:

12 23689. (a) (1) For each taxable year beginning on and after
13 January 1, 2014, and before January 1, 2025, there shall be allowed
14 as a credit against the "tax," as defined in Section 23036, an amount
15 as determined by the committee pursuant to paragraph (2) and
16 approved pursuant to Section 18410.2.

17 (2) The credit under this section shall be allocated by GO-Biz
18 with respect to the 2013–14 fiscal year through and including the
19 2017–18 fiscal year. The amount of credit allocated to a taxpayer
20 with respect to a fiscal year pursuant to this section shall be as set
21 forth in a written agreement between GO-Biz and the taxpayer and
22 shall be based on the following factors:

23 (A) The number of jobs the taxpayer will create or retain in this
24 state.

25 (B) The compensation paid or proposed to be paid by the
26 taxpayer to its employees, including wages and fringe benefits.

27 (C) The amount of investment in this state by the taxpayer.

28 (D) The extent of unemployment or poverty in the area
29 according to the United States Census in which the taxpayer's
30 project or business is proposed or located.

31 (E) The incentives available to the taxpayer in this state,
32 including incentives from the state, local government, and other
33 entities.

34 (F) The incentives available to the taxpayer in other states.

35 (G) The duration of the proposed project and the duration the
36 taxpayer commits to remain in this state.

37 (H) The overall economic impact in this state of the taxpayer's
38 project or business.

39 (I) The strategic importance of the taxpayer's project or business
40 to the state, region, or locality.

1 (J) The opportunity for future growth and expansion in this state
2 by the taxpayer's business.

3 (K) The extent to which the anticipated benefit to the state
4 exceeds the projected benefit to the taxpayer from the tax credit.

5 (3) The written agreement entered into pursuant to paragraph
6 (2) shall include:

7 (A) Terms and conditions that include the taxable year or years
8 for which the credit allocated shall be allowed, a minimum
9 compensation level, and a minimum job retention period.

10 (B) Provisions indicating whether the credit is to be allocated
11 in full upon approval or in increments based on mutually agreed
12 upon milestones when satisfactorily met by the taxpayer.

13 (C) Provisions that allow the committee to recapture the credit,
14 in whole or in part, if the taxpayer fails to fulfill the terms and
15 conditions of the written agreement.

16 (b) For purposes of this section:

17 (1) "Committee" means the California Competes Tax Credit
18 Committee established pursuant to Section 18410.2.

19 (2) "GO-Biz" means the Governor's Office of Business and
20 Economic Development.

21 (c) For purposes of this section, GO-Biz shall do the following:

22 (1) Give priority to a taxpayer whose project or business is
23 located or proposed to be located in an area of high unemployment
24 or poverty.

25 (2) Negotiate with a taxpayer the terms and conditions of
26 proposed written agreements that provide the credit allowed
27 pursuant to this section to a taxpayer.

28 (3) Provide the negotiated written agreement to the committee
29 for its approval pursuant to Section 18410.2.

30 (4) Inform the Franchise Tax Board of the terms and conditions
31 of the written agreement upon approval of the written agreement
32 by the committee.

33 (5) Inform the Franchise Tax Board of any recapture, in whole
34 or in part, of a previously allocated credit upon approval of the
35 recapture by the committee.

36 (6) Post on its Internet Web site all of the following:

37 (A) The name of each taxpayer allocated a credit pursuant to
38 this section.

39 (B) The estimated amount of the investment by each taxpayer.

40 (C) The estimated number of jobs created or retained.

1 (D) The amount of the credit allocated to the taxpayer.

2 (E) The amount of the credit recaptured from the taxpayer, if
3 applicable.

4 (F) The primary location where the taxpayer has committed to
5 increasing the net number of jobs or make investments. The
6 primary location shall be listed by city or, in the case of
7 unincorporated areas, by county.

8 (G) Information that identifies each tax credit award that was
9 given a priority for being located in a high unemployment or
10 poverty area, pursuant to paragraph (1).

11 (H) Information that identifies each tax credit award that is
12 being counted toward the requirement of paragraph (3) of
13 subdivision (g).

14 (7) When determining whether to enter into a written agreement
15 with a taxpayer pursuant to this section, GO-Biz may consider
16 other factors, including, but not limited to, the following:

17 (A) The financial solvency of the taxpayer and the taxpayer's
18 ability to finance its proposed expansion.

19 (B) The taxpayer's current and prior compliance with federal
20 and state laws.

21 (C) Current and prior litigation involving the taxpayer.

22 (D) The reasonableness of the fee arrangement between the
23 taxpayer and any third party providing any services related to the
24 credit allowed pursuant to this section.

25 (E) Any other factors GO-Biz deems necessary to ensure that
26 the administration of the credit allowed pursuant to this section is
27 a model of accountability and transparency and that the effective
28 use of the limited amount of credit available is maximized.

29 (d) For purposes of this section, the Franchise Tax Board shall
30 do all of the following:

31 (1) (A) Except as provided in subparagraph (B), review the
32 books and records of all taxpayers allocated a credit pursuant to
33 this section to ensure compliance with the terms and conditions
34 of the written agreement between the taxpayer and GO-Biz.

35 (B) In the case of a taxpayer that is a "small business," as
36 defined in Section 23626, review the books and records of the
37 taxpayer allocated a credit pursuant to this section to ensure
38 compliance with the terms and conditions of the written agreement
39 between the taxpayer and GO-Biz when, in the sole discretion of

1 the Franchise Tax Board, a review of those books and records is
2 appropriate or necessary in the best interests of the state.

3 (2) Notwithstanding Section 19542:

4 (A) Notify GO-Biz of a possible breach of the written agreement
5 by a taxpayer and provide detailed information regarding the basis
6 for that determination.

7 (B) Provide information to GO-Biz with respect to whether a
8 taxpayer is a “small business,” as defined in Section 23626.

9 (e) In the case where the credit allowed under this section
10 exceeds the “tax,” as defined in Section 23036, for a taxable year,
11 the excess credit may be carried over to reduce the “tax” in the
12 following taxable year, and succeeding five taxable years, if
13 necessary, until the credit has been exhausted.

14 (f) Any recapture, in whole or in part, of a credit approved by
15 the committee pursuant to Section 18410.2 shall be treated as a
16 mathematical error appearing on the return. Any amount of tax
17 resulting from that recapture shall be assessed by the Franchise
18 Tax Board in the same manner as provided by Section 19051. The
19 amount of tax resulting from the recapture shall be added to the
20 tax otherwise due by the taxpayer for the taxable year in which
21 the committee’s recapture determination occurred.

22 (g) (1) The aggregate amount of credit that may be allocated
23 in any fiscal year pursuant to this section and Section 17059.2 shall
24 be an amount equal to the sum of subparagraphs (A), (B), and (C),
25 less the amount specified in subparagraphs (D) and (E):

26 (A) Thirty million dollars (\$30,000,000) for the 2013–14 fiscal
27 year, one hundred fifty million dollars (\$150,000,000) for the
28 2014–15 fiscal year, and two hundred million dollars
29 (\$200,000,000) for each fiscal year from 2015–16 to 2017–18,
30 inclusive.

31 (B) The unallocated credit amount, if any, from the preceding
32 fiscal year.

33 (C) The amount of any previously allocated credits that have
34 been recaptured.

35 (D) The amount estimated by the Director of Finance, in
36 consultation with the Franchise Tax Board and the State Board of
37 Equalization, to be necessary to limit the aggregation of the
38 estimated amount of exemptions claimed pursuant to Section
39 6377.1 and of the amounts estimated to be claimed pursuant to
40 this section and Sections 17053.73, 17059.2, and 23626 to no more

1 than seven hundred fifty million dollars (\$750,000,000) for either
2 the current fiscal year or the next fiscal year.

3 (i) The Director of Finance shall notify the Chairperson of the
4 Joint Legislative Budget Committee of the estimated annual
5 allocation authorized by this paragraph. Any allocation pursuant
6 to these provisions shall be made no sooner than 30 days after
7 written notification has been provided to the Chairperson of the
8 Joint Legislative Budget Committee and the chairpersons of the
9 committees of each house of the Legislature that consider
10 appropriations, or not sooner than whatever lesser time the
11 Chairperson of the Joint Legislative Budget Committee, or his or
12 her designee, may determine.

13 (ii) In no event shall the amount estimated in this subparagraph
14 be less than zero dollars (\$0).

15 (E) (i) For the 2015–16 fiscal year and each fiscal year
16 thereafter, the amount of credit estimated by the Director of Finance
17 to be allowed to all qualified taxpayers for that fiscal year pursuant
18 to subparagraph (A) or subparagraph (B) of paragraph (1) of
19 subdivision (c) of Section 23636.

20 (ii) If the amount available per fiscal year pursuant to this section
21 and Section 17059.2 is less than the aggregate amount of credit
22 estimated by the Director of Finance to be allowed to qualified
23 taxpayers pursuant to subparagraph (A) or subparagraph (B) of
24 paragraph (1) of subdivision (c) of Section 23636, the aggregate
25 amount allowed pursuant to Section 23636 shall not be reduced
26 and, in addition to the reduction required by clause (i), the
27 aggregate amount of credit that may be allocated pursuant to this
28 section and Section 17059.2 for the next fiscal year shall be reduced
29 by the amount of that deficit.

30 (iii) It is the intent of the Legislature that the reductions specified
31 in this subparagraph of the aggregate amount of credit that may
32 be allocated pursuant to this section and Section 17059.2 shall
33 continue if the repeal dates of the credits allowed by this section
34 and Section 17059.2 are removed or extended.

35 (2) (A) In addition to the other amounts determined pursuant
36 to paragraph (1), the Director of Finance may increase the
37 aggregate amount of credit that may be allocated pursuant to this
38 section and Section 17059.2 by up to twenty-five million dollars
39 (\$25,000,000) per fiscal year through the 2017–18 fiscal year. The
40 amount of any increase made pursuant to this paragraph, when

1 combined with any increase made pursuant to paragraph (2) of
2 subdivision (g) of Section 17059.2, shall not exceed twenty-five
3 million dollars (\$25,000,000) per fiscal year through the 2017–18
4 fiscal year.

5 (B) It is the intent of the Legislature that the Director of Finance
6 increase the aggregate amount under subparagraph (A) in order to
7 mitigate the reduction of the amount available due to the credit
8 allowed to all qualified taxpayers pursuant to subparagraph (A) or
9 (B) of paragraph (1) of subdivision (c) of Section 23636.

10 (3) Each fiscal year, 25 percent of the aggregate amount of the
11 credit that may be allocated pursuant to this section and Section
12 17059.2 shall be reserved for “small business,” as defined in
13 Section 17053.73 or 23626.

14 (4) Each fiscal year, no more than 20 percent of the aggregate
15 amount of the credit that may be allocated pursuant to this section
16 shall be allocated to any one taxpayer.

17 (h) GO-Biz may prescribe rules and regulations as necessary to
18 carry out the purposes of this section. Any rule or regulation
19 prescribed pursuant to this section may be by adoption of an
20 emergency regulation in accordance with Chapter 3.5 (commencing
21 with Section 11340) of Part 1 of Division 3 of Title 2 of the
22 Government Code.

23 (i) (1) A written agreement between GO-Biz and a taxpayer
24 with respect to the credit authorized by this section shall not
25 restrict, broaden, or otherwise alter the ability of the taxpayer to
26 assign that credit or any portion thereof in accordance with Section
27 23663.

28 (2) A written agreement between GO-Biz and a taxpayer with
29 respect to the credit authorized by this section must comply with
30 existing law on the date the agreement is executed.

31 (j) (1) Upon the effective date of this section, the Department
32 of Finance shall estimate the total dollar amount of credits that
33 will be claimed under this section with respect to each fiscal year
34 from the 2013–14 fiscal year to the 2024–25 fiscal year, inclusive.

35 (2) The Franchise Tax Board shall annually provide to the Joint
36 Legislative Budget Committee, by no later than March 1, a report
37 of the total dollar amount of the credits claimed under this section
38 with respect to the relevant fiscal year. The report shall compare
39 the total dollar amount of credits claimed under this section with
40 respect to that fiscal year with the department’s estimate with

- 1 respect to that same fiscal year. If the total dollar amount of credits
- 2 claimed for the fiscal year is less than the estimate for that fiscal
- 3 year, the report shall identify options for increasing annual claims
- 4 of the credit so as to meet estimated amounts.
- 5 (k) This section is repealed on December 1, 2025.

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